IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1533 of 1985

Date of Decision: 29-09-2005

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ORIENTAL INSURANCE CO.LTD. - Appellant(s)
Versus
LADABAI RANABHA & 8 - Defendant(s)

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(See Next Page for Full Time)

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Appellant:

MR SUNIL B PARIKH

For Respondents:

MR AV PRAJAPATI

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This appeal arises out of the award passed by the Motor Accident Claims Tribunal,

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Jamnagar, in Motor Accident Claim Petition No.132 of 1985 dated April 30, 1985 awarding compensation of Rs.1,35,500 carrying interest at the rate of 6 per cent per annum from the date of petition till realisation with proportionate costs.

2. Shortly stated, accident took place on 19.12.1982. Ranabha Hajabha (deceased) hired tractor No. GRI 9138 attached with trailor No. GTB 3380. It is owned by opponent-1, driven by opponent-3 and insured with opponent-4. The deceased, hirer of the vehicle, was travelling by it from Dwarka to Nageshwar. When it covered a distance of about 4 kms. on Dwarka-Nageshwar road, due to rash and negligent driving, opponent-3 lost control and the vehicle turned turtle in the road side ditch. Deceased was crushed along with another occupant and died. Therefore, legal heirs preferred claim for Rs.2,00,000/-,

reduced to Rs.1,35,500 by Purshis (Exh.63). Opponents contested the claim, filed the written statements, except opponent-3. Allegations in the claim petition have been controverted, including the statement about income of the deceased and rash and negligent driving of the vehicle by the driver. Claims Tribunal framed issues: `(1) whether the applicants proved that opponent No.3 drove vehicle No. GRI 9138 rashly and/or negligently and thereby caused death of Mr. Ranabha Hajibha?, (2) whether opponents Nos.1 and 4 are vicariously liable?, (3) whether the applicants are entitled to recover Rs.2,00,000/-? If not, what amount and from whom? And (4) what order?'.

All the issues were decided in favour of the claimant and compensation stated above awarded.

3. Shri Sunil B. Parekh, learned counsel for the appellant, submits that tractor was used for purpose other than covered by the policy.

When he was questioned this question has not been raised before the Claims Tribunal, he submits that it has been raised in the written statement. Perusal of written statement demonstrates that appellant has raised large number of contentions, but no issues thereon have been claimed, except the four issues recorded in paragraph-5 of the judgment, which means, appellant did not ask for more issues on the averments raised in the written statement. Further, no submissions were made nor raised before the Claims Tribunal. Consequently, they cannot be permitted to be raised at this stage. Option available to the appellant in terms of Apex Court decisions in *Daman Singh and others, etc. Vs. State of Punjab and others, etc. (AIR 1985 SC 973* and *State of Maharashtra Vs. Ramdas Shrinivas Nayak and another (AIR 1982 SC 1249)* has not been availed. Otherwise, it transpires that award has been passed in terms of Purshis (Exh.63) dated 24.04.1985, sequel to which judgment for the amount mentioned in the Purshis has been

pronounced. This means, Purshis mentioned the amount acceptable to both the sides. With this background, appeal raising all sorts of contentions should not have been filed. The claim, preferred by the widow and mother of the deceased apart from three minor children pertaining to accident dated 19.12.1982, remained pending and is being disposed of, after almost 20 years.

There is no merit in this Appeal and the same is dismissed. Let compensation be paid to the claimants immediately.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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